

FORM 40: Settlement Agreement and Cover Letter

EA-YY-XXX

(Name of Licensee)

(Address)

SUBJECT: SETTLEMENT AGREEMENT

Dear Mr./Ms. _____:

This refers to (describe telephone conversation or correspondence) regarding settlement of the unpaid civil penalty in the amount of _____ proposed (imposed) on (date), and the option of the attached Settlement Agreement, the terms of which would then be ordered by Confirmatory Order.

Under the terms of the Settlement Agreement and Confirmatory Order, [briefly describe the terms of the settlement agreement, e.g., "the NRC withdraws the civil penalty and the matter will be considered settled. However, should you violate any of the terms of the Settlement Agreement as ordered by the Confirmatory Order, then the unpaid civil penalty amount would be due in full."]

You should sign the enclosed Settlement Agreement in duplicate, under oath or affirmation, and submit it within 10 business days of the date of this letter to (name of current Director, OE), Director, Office of Enforcement, U.S. Nuclear Regulatory Commission, One White Flint North, 11555 Rockville Pike, Rockville, Maryland 20852-2378. Following receipt, a Confirmatory Order ordering the terms of the Settlement Agreement will be issued to you. A copy of the signed Settlement Agreement will also be returned to you.

Sincerely,

Director, Office of Enforcement

Docket No. _____

License No. _____

Enclosure: As Stated

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

BEFORE THE OFFICE OF ENFORCEMENT

In the Matter of)	
)	Docket No. _____
<u>(LICENSEE)</u>)	License No. _____
<u>(City, State)</u>)	EA-YY-XXX

SETTLEMENT AGREEMENT

[Double space from here to end, except single space title of signing official.]

1. [This section should specify the date and amount of the Notice of Violation and Proposed Imposition of Civil Penalty, and provide the number and a brief description of the nature of the violations for which the NOV was proposed. The following example is provided as a sample discussion for this section.]

[On (date), a written Notice of Violation and Proposed Imposition of Civil Penalty (Notice) in the amount of \$7,500 was issued to (name of licensee) for a violation involving failure to perform an adequate survey of the entire circumference of a radiography device in accordance with 10 CFR 34.43 while conducting activities on (date) at (location).]

2. [This section should briefly describe the licensee's response to the NOV. The following example is provided as a sample discussion for this section.]

[(Name of licensee) responded to the Notice in a letter dated _____. The Licensee denied the violation and requested remission of the civil penalty.]

3. [This section should briefly indicate the NRC's consideration of the licensee's response, the date and amount of the Order Imposing Civil Monetary Penalty, and the current status. The following example is provided as a sample discussion for this section.]

[After consideration of the Licensee's response, the NRC staff concluded that the violation occurred as stated in the Notice. The NRC issued an Order Imposing a Civil Monetary Penalty on (date) in the amount of \$7,500. The Licensee has not paid the civil penalty and has indicated in a letter dated _____ that it would agree to cease activities in NRC jurisdiction for a period of 3 years if the fine were abated.]

4. (Name of licensee) and its [President], Mr./Ms. _____, and the NRC staff conclude that the following Settlement Agreement best serves the interests of the parties and the purposes of the Atomic Energy Act and the NRC's requirements: [The terms of the settlement agreement should follow. The following example is provided as a sample discussion for this section.]

a. [The NRC withdraws the (\$ amount) civil penalty imposed by Order dated _____.]

b. [Mr./Ms./or Licensee _____ agrees that for a period of three years from the date (s)he signs this Settlement Agreement:

- (1) neither (s)he, nor the Licensee, nor any successor entity wherein Mr./Ms. _____ is an authorized user, radiographer, radiographer's assistant, Radiation Safety Officer, Assistant Radiation Safety Officer, or an officer or controlling stockholder, shall apply to the NRC for a license; and
- (2) neither Mr./Ms. _____, nor the Licensee, nor a successor entity as described in (1) above, shall engage in licensed activities within the jurisdiction of the NRC for that same period of time.]
- c. This agreement constitutes settlement without full payment of the civil penalty imposed by Order dated _____ (EA-YY-XXX). However, if Mr./Ms. _____, (name of licensee), or a successor entity violates paragraph 4.b. of this Settlement Agreement, then the civil penalty amount will be due and payable by Mr./Ms./or Licensee _____ immediately and without further notice. In this event, Mr./Ms./or Licensee _____ further agrees to waive the right to request a hearing on this imposition or otherwise contest or seek review of this penalty action before the NRC or in any court.
- d. Mr./Ms. _____, (name of licensee), and any successor entity hereby agree to the issuance of a Confirmatory Order ordering the terms of this Settlement Agreement, and agree to waive any rights that may still be extant to seek a hearing on, or otherwise contest, the matters raised in the Order Imposing Civil Monetary Penalty dated _____.]

FOR (License)

Dated: _____ BY: _____
(Name of signatory Official)

FOR THE NUCLEAR REGULATORY COMMISSION

Dated: _____ BY: _____
(Name of current Director, OE), Director
Office of Enforcement